

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7171 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

NATUBHAI BECHARBHAI PATEL

Versus

ADDL.DEVELOPMENT COMMISSIONER

Appearance:

MR KS JHAVERI for Petitioner
Mr.K.T.Dave, Ld.Asst.GOVERNMENT PLEADER for Respondent No. 1
MR RA MISHRA for Respondent Nos.2&3
MR MANOJ N POPAT for Respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 10/08/2000

ORAL JUDGEMENT

Rule. Mr.K.T.Dave, Ld.AGP appears for respondent No.1 and waives service of rule. Mr.R.A.Mishra appears

for respondent Nos 2 & 3 and waives service of rule. Mr. Manoj N. Popat appears for respondent No.4 and waives service of rule. With the consent of learned counsel for parties matter is taken up for final hearing and disposed of today.

2. In this petition under Article 226 of the Constitution, the petitioner challenges the order dated 24.5.1999(at annexure "I" to the petition) removing the petitioner from the office of the Sarpanch of village Undel Gram Panchayat. The order was passed by the District Development Officer under section 57 of the Gujarat Panchayats Act, 1993 (hereinafter referred to as "the Act"). Aggrieved by the said order the petitioner preferred appeal before the Development Commissioner and the said appeal came to be dismissed on 16.9.1999(at annexure "A" to the petition). Hence, the petitioner filed the present petition.

3. Since the order of removal was passed by the authorities only on the ground that the petitioner was not removing encroachment, while issuing notice the Court passed the following order on 21.9.1999:

"Learned counsel for the petitioner states that the petitioner is ready and willing to remove the remaining encroachments in question in accordance with law with utmost expedition. Notice returnable on 11.10.1999. On the returnable date the petitioner shall file an affidavit placing on record the steps taken by the petitioner for removing the encroachments. Till the returnable date there shall be ad interim relief in terms of para 6(B). D.S.is permitted".

Thereafter, the petitioner filed additional affidavit dated 11.10.1999 and affidavit-in-rejoinder dated 28.1.2000 stating interalia as under:

"2.6 It is submitted that the Resolution No.407(13) was passed in the General Meeting of the Panchayat on 27th October, 1999 wherein it is stated that the encroachment of the following persons who are residing in Gayatrinagar and Laxmipura are removed after following the due procedure of law:

- (1) Shri Baboobhai Ajaysinh Chavda
- (2) Shri Bhikhabhai Girdharbhai Patel

- (3) Shri Maganbhai Lallubhai Patel
- (4) Shri Chavda Chhatrasinh Amarsinh
- (5) Shri Kantibhai Gordhanbhai Suthar
- (6) Shri Mangalbhai Veribhai Patel

2.7 It is submitted that the Panchayat gave another notice to Shri Natwarbhai Shankerbhai Patel on 5.11.1999. It is submitted that another notice was also given on 30th November, 1999 to Shri Mangalbhai Veribhai Patel for removing the encroachment.

2.8 It is submitted that the Panchayat wrote a letter on 5th January 2000 to Police Inspector, Rural Police Station, Khambhat to give police protection on 17.1.2000 so that the Panchayat can take necessary action under the Act to remove those encroachments and accordingly police protection was given on 17.1.2000.

2.9 It is submitted that on 17.1.2000 the following persons who had not removed the encroachments earlier, their encroachment was cleared by the Panchayat in the presence of Police force and Panchnama was also made on the same day:

- (1) Shri Bhailalbhai Jethabhai Patel
- (2) Shri Natwarbhai Shankarbhai Patel
- (3) Mangalbhai Veribhai"

4. When the petition reached for final hearing today the learned counsel for the petitioner pointed out that the term of the office of the Sarpanch has come to an end on 21.7.2000 by efflux of time and on that ground this petition could have been disposed of as infructuous, but in view of powers conferred upon the District Development Officer under section 57(3) of the Act, it is clarified that since the Sarpanch was removed under section 57(1) of the Act, the petitioner's challenge to the impugned order of removal still survives.

5. In the affidavit in reply filed on behalf of the Taluka Development Officer it is submitted that the order of removal was rightly passed by the authorities.

7. Having heard the learned counsel for the parties and considering the fact that non removal of encroachment was the only ground for removing the petitioner and after issuance of notice by this Court the petitioner has removed the encroachments as per the stand taken in the

affidavit-in-rejoinder and also respondents have pointed out that no other encroachment is left out by the petitioner, in the peculiar facts and circumstances of the case, it appears to the Court that removal of the petitioner from the office of Sarpanch is not justified and hence the impugned orders passed by the District Development Officer (at annexure "I" to the petition) and the order of the Development Commissioner confirming the removal of the petitioner in appeal vide impugned order dated 16.9.99(at annexure "A" to the petition) are hereby quashed.

Rule is made absolute accordingly. There shall be no order as to costs.

10.8.2000 (M.S.SHAH, J)